



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2005 AUG 10 PM 12:49

999 18<sup>TH</sup> STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: FIFRA-08-2005-0010

IN THE MATTER OF:

OVERLY CO-OPERATIVE ELEVATOR CO. )

1114 E. Central Avenue )

Overly, ND 58384 )

RESPONDENT )

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

August 10, 2005

DATE

Alfred C. Smith

Alfred C. Smith

Regional Judicial Officer

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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Docket No. **FIFRA-08-2005-0010**

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF:

Overly Co-operative Elevator Co.  
1114 E. Central Ave.  
Overly, ND 58384  
(EPA Establishment No.: 073809-ND-001),

Respondent

**COMPLAINT AND EXPEDITED  
SETTLEMENT AGREEMENT (CESA)**

**A. JURISDICTION**

1. This Complaint and Expedited Settlement Agreement ("CESA") is issued to Farmer's Union Oil Company ("Respondent") for a violation of FIFRA 12(a)(2)(L).
2. The undersigned Environmental Protection agency ("EPA"), Region 8 officials issue this CESA under the authority vested in the Administrator of EPA by Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a).
3. This section authorizes EPA to bring an action under Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a)(1), for civil administrative penalties against Respondent who has violated, or is in violation of, a requirement or prohibition of FIFRA.

**B. ALLEGED VIOLATION**

1. Respondent is a "person" within the meaning of Section 2(s) of FIFRA, 7 U.S.C. section 136(s), and is therefore subject to regulation.
2. Respondent is a "distributor/seller" as defined by Section 2(gg) of FIFRA 7 U.S.C. section 136(gg) and a "producer" as defined by Section 2(w) of FIFRA 7 U.S.C. 136(w).
3. Respondent produces, sells and distributes registered "pesticides" within the meaning of Section 2(u) of FIFRA, 7 U.S.C. section 136(u).
4. EPA reviewed its records and determined that Respondent had not submitted the "Pesticide Report for Pesticide-Producing and Device-Producing Establishments" pursuant to Section of 7 FIFRA, 7 U.S.C. section 136(e) for calendar year 2004, by March 1, 2005.
5. Under Section 12(a)(2)(L) of FIFRA, an annual report is required by March 1st for the previous year.

6. Upon consideration of the nature, circumstances, extent and gravity of the violation and Respondent's ability to continue in business, the size of Respondent's business, prior history of compliance, degree of culpability, lack of economic benefit resulting from the violations, its good faith and immediate effort to comply once informed of the violations, other matters as justice may require, and upon consideration of the entire record herein, EPA offers this CESA under its expedited enforcement procedures in order to settle the violation based upon the findings noted above, for the total civil penalty amount of **three thousand nine hundred dollars (\$3,900.00)**.

C. **CIVIL PENALTY**

1. The Respondent signing below admits that EPA has jurisdiction over the subject matter alleged in the CESA, neither admits nor denies the specific factual allegations contained in the CESA, and consents to the assessment of the penalty as stated in paragraph B.6., above.
2. Respondent consents to the issuance of a Final Order which incorporates the terms and conditions of this CESA and to pay the civil penalty set forth in paragraph C.3. below.
3. Respondent agrees to pay the of **three thousand nine hundred dollars (\$3,900.00)** penalty amount in **eight (8)** installments of **four hundred eighty-seven dollars and fifty cents (\$487.50)**. Respondent specifically agrees that should it be delinquent with any installment payment, interest due shall be calculated from the date of the issuance of the Final Order as set forth in paragraph C.5, below. Such interest calculation is non-discretionary and required by federal government debt collection procedures.
4. The first penalty installment of \$487.50 is due on or before August 30, 2005. The second penalty installment of \$487.50 is due on or before November 30, 2005. The third penalty installment of \$487.50 is due on or before February 30, 2006. The fourth penalty installment of \$487.50 is due on or before May 30, 2006. The fifth penalty installment of \$487.50 is due on or before August 30, 2006. The sixth penalty installment of \$487.50 is due on or before November 30, 2006. The seventh penalty installment of \$487.50 is due on or before February 30, 2007. The eight and final penalty installment of \$487.50 is due on or before May 30, 2007. Respondent shall make these **eight** installment payments by remitting a cashier's or certified check for the specified amount, payable to "Treasurer, United States of America," to:

Mellon Bank  
EPA Region VIII  
(Regional Hearing Clerk)  
P.O. Box 360859M  
Pittsburgh, PA. 15251

Each check shall reference the name and address of Respondent's facility and the EPA docket number of this action. The docket number is listed in the first page of this CESA. A copy of the check shall be sent simultaneously to:

Tina Artemis  
Regional Hearing Clerk (8RC)  
U.S. EPA Region VIII  
999 18<sup>th</sup> Street, Suite 300  
Denver, Colorado 80202-2466

5. Respondent agrees and consents that if Respondent fails to pay the penalty amount on the due dates set forth in paragraph C.4. above, any unpaid balance thereof, shall become due and owing by the Respondent, or EPA, in its sole discretion, may waive all or part of such acceleration. Furthermore, in the event timely payment is not made, consistent with paragraph C.4. above, interest on any unpaid balance shall accrue at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. A late payment charge of fifteen dollars (\$15.00) shall be imposed after the first 30 days that the payment, or any portion thereof, is overdue, with an additional charge of fifteen dollars (\$15.00) imposed for each subsequent 30-day period until the payment due is made. In addition, a six percent (6%) per annum penalty shall be applied on any principal amount not paid NINETY (90) days after the due dates set forth in paragraph C.4. above.

**D. TERMS AND CONDITIONS**

1. Nothing in this CESA shall be construed as a waiver by EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CESA.
2. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this CESA and to bind the party he/she represents to the terms and conditions of this CESA.
3. Each party shall bear its own costs and attorneys fees in connection with this matter.
4. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this CESA pursuant to 40 CFR § 22.15. Upon signing and returning of this CESA to EPA, the Respondent waives the opportunity for a hearing pursuant to Section 554 of the Administrative Procedure Act, 5 U.S.C. §554.
5. This CESA, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent and Respondent's parent, affiliates, heirs, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this CESA. This CESA, upon

incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violation alleged in the CESA.

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8, Office of Enforcement, Compliance  
and Environmental Justice, Complainant.**

Date: 8/9/05

By: Elisabeth Evans  
Elisabeth Evans, Director  
Technical Enforcement Program

Date: 8/9/05

By: Michael T. Risner  
Michael T. Risner, Director  
David Janik, Supervisor  
Legal Enforcement Program

Date: 8/9/2005

By: Eduardo Quintana  
Eduardo Quintana, Attorney  
Legal Enforcement Program

In the Matter of: Overly Co-operative Elevator Co.  
Docket No:  
(Continued)

**OVERLY CO-OPERATIVE ELEVATOR CO.,  
Respondent.**

Date: AUG 4, 2005

By: Robert Syvertson

Name, Title: Robert Syvertson President

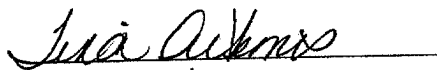
## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT AND CONSENT AGREEMENT/FINAL ORDER** in the matter of **OVERLY CO-OPERATIVE ELEVATOR CO., DOCKET NO.: FIFRA-08-2005-0010** was filed with the Regional Hearing Clerk on August 10, 2005.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Eduardo Quintana, Enforcement Attorney, U. S. EPA – Region 8, 999 18<sup>th</sup> Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on August 10, 2005, to:

Robert Syvertson, President  
Overly Co-operative Elevator Co.  
1114 E. Central Avenue  
Overly, ND 58384

August 10, 2005

  
Tina Artemis  
Regional Hearing Clerk



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